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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

In re the Marriage of JAIME GAY and  
MICHAEL TERPKO.

JAIME GAY,

Appellant,

v.

MICHAEL TERPKO,

Respondent.

A148641

(Humboldt County

Super. Ct. No. FL 140429)

Jaime Gay, appearing in propria persona, appeals a final order changing custody of her three children from her to their father, Michael Terpkö. She contends, among many other things, that the court violated Family Code section 3027.5 by restricting her custody because she reported that Michael had sexually abused their oldest daughter, and that the court abused its discretion in approving father's proposed plan to transition custody. We find no merit in any of her numerous contentions and therefore shall affirm the order.

**Factual and Procedural History**

Jaime and Michael were married in 2001. They have three daughters, now ages 17, 15, and 14. Following their divorce in 2006, a final judgment was entered ordering joint legal and physical custody of the girls with Jaime having primary physical custody.

On March 14, 2014, Michael filed a motion to enforce the current order or, alternatively, to change custody due to his discovery that Jaime had withdrawn the children from school and was making allegations that during a recent visit he had sexually abused the oldest daughter. On March 19, Jaime sought a domestic violence

temporary restraining order and requested sole custody of the children based on the allegation that Michael recently had sexually abused the oldest daughter. A temporary restraining order was issued the following day. The two proceedings were consolidated and Leslie Packer, PhD, was appointed by the court as the custody evaluator.

On March 25, 2016, following a trial that spanned 15 court days, the court issued a comprehensive tentative decision indicating that sole legal and physical custody would be awarded to Michael, subject to and conditioned upon the development of a transition plan.

On April 1, 2016, Jaime filed a substitution of attorney relieving her trial counsel and substituting herself in propria persona.

On April 18, 2016, Michael filed a proposed transition plan and a proposed final order. Following a hearing on April 22, the court issued its final order modifying custody and adopting the proposed transition plan.<sup>1</sup>

The court's tentative decision, adopted in its final order as its statement of decision, finds that there is insufficient evidence to sustain the allegations of sexual abuse by Michael and that, while Jaime may have made those allegations recklessly, the evidence did not support the conclusion that she made knowingly false allegations. The court also found that the parents "have engaged in a 'take no prisoners' war of an all or nothing battle where the only casualties are three wonderfully intelligent, sensitive, and unique young ladies who are stuck between the dysfunction of their parents." "Neither party followed the [prior] court order to the letter" and to the extent they complied with the prior orders they did so only "begrudgingly." The court found that between the two parents, "it is most likely that Mr. Terpko would facilitate contact with the non-custodial parent." While the court found that "[a]t this point, the children have no relationship with their father, and they do not want one," that was largely due to Jaime's "conscious or unconscious actions and statements." The court explained, "During

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<sup>1</sup> At the same time the court issued an order terminating the domestic violence temporary restraining order. Although this order is attached to Jaime's notice of appeal, she does not challenge it on appeal.

examination by minor's counsel, Ms. Gay made very telling comments. She testified when questioned why she objected to contact with Mr. Terpko's family, that she was concerned that contact with the extended family would 'tamper with (the children's) thought process.' For this court, one of the most revealing comments which suggests that she knew the children were susceptible to manipulation. She stated that essentially she feared that the extended family would 'brainwash' the children about how they view these allegations. Apparently only she should have access to the children's thought processes. Surprising as it was to hear her utter those statements, it may be more reasonable to conclude that she does not have the capacity for introspection that would permit her to evaluate whether she was doing the very thing she suspected the extended family might do if the children were encouraged to have contact with them." The court added, "Ms. Gay has exercised unilateral control over all decisions and has exerted ultimate control over how the children view their father. There is clear evidence of 'splitting.'"<sup>2</sup>

With respect to the ultimate question, whether the best interests of the children require immediate change of custody in order to repair their relationship with their father, the court noted that minors' counsel and the court's appointed expert "urge that no other alternative exists but to remove the children from the custody of their mother and place them in the custody of their father." The court explained, "I have considered that the least traumatic solution would be to simply leave the children where they are, with their mother. Unfortunately I do not think that solution would withstand appellate scrutiny, given the weight of evidence adduced here. In addition, while that might seem a convenient lower impact solution, such a solution would ignore the long term effects that

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<sup>2</sup> Dr. Packer explained that splitting refers to "black and white, all good vs. all bad thinking. Splitting is normative thinking in very young children. By age three the child starts to be capable of sensing ambiguity, and having ambivalent feelings. By age five most children see that there are gray areas. From age five on, children are less likely to view people and things . . . as all good or all bad. Splitting, as a way of thinking, is a sign of regression in children older than five."

termination of the relationship with their father would have upon the children to which Dr. Packer testified.”

The transition plan ordered by the court requires that the children reside at Dr. Rebecca Bailey’s Transitioning Families reunification program site for a “length determined by Dr. Bailey.” The plan directs that an “appropriate therapist for Ms. Gay shall be identified by Dr. Packer in collaboration with Dr. Bailey. Ms. Gay shall attend therapy as recommended by Dr. Packer and shall follow all recommendations of the therapist. [¶] . . . After the children are released to the transport team, Ms. Gay shall have no contact of any sort with the children (i.e. no contact in person or via email, phone, letter, through third parties or in any other manner) until Dr. Packer, in collaboration with Dr. Bailey and Ms. Gay’s therapist, determines that Ms. Gay is ready for reintegration with the children. It is anticipated that the period of no contact will be at least 90 days.” The order awards Michael sole legal and physical custody of the children, but directs that “Ms. Gay shall be kept fully informed of the children’s medical treatment and needs, psychological treatment and needs and educational progress. Mr. Terpko shall cooperate to make this information sharing happen and shall sign any and all releases necessary to allow Ms. Gay full access to such records.”

Jaime timely filed a notice of appeal.

## **Discussion**

### **1. Family Code Section 3027.5**

Family Code<sup>3</sup> section 3027.5, subdivision (a) reads: “No parent shall be placed on supervised visitation, or be denied custody of or visitation with his or her child, and no custody or visitation rights shall be limited, *solely* because the parent (1) lawfully reported suspected sexual abuse of the child, (2) otherwise acted lawfully, based on a reasonable belief, to determine if his or her child was the victim of sexual abuse, or (3) sought treatment for the child from a licensed mental health professional for suspected sexual abuse.” (Italics added.) Under section 3027.5, subdivision (b), the court

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<sup>3</sup> All statutory references are to the Family Code.

may “limit a parent's custody or visitation if the court finds substantial evidence that the parent, with the intent to interfere with the other parent's lawful contact with the child, made a report of child sexual abuse, during a child custody proceeding or at any other time, that he or she knew was false at the time it was made.” The court’s finding that Jaime’s report was not knowingly false precludes application of subdivision (b). Nonetheless, the court’s ruling did not violate subdivision (a) because the court did not modify custody *solely* because Jaime made an allegation of child abuse against Michael. The rather extreme remedy that the court prescribed was grounded on what the court found to be Jaime’s “conscious and unconscious” alienation of the children from their father.

## **2. The Transitioning Families Program**

Jaime contends that the trial court abused its discretion in approving Dr. Bailey’s program to transition the children to Michael’s custody. She argues that Dr. Bailey’s program was selected at the last minute after Michael rejected a different program and that Dr. Bailey made her recommendations for treatment based only on information provided by Michael and without having met her and the children. The court explained, however, that although it had requested both parties to submit a proposed transition plan, Jaime had not presented an alternative plan; all that was before him was Michael’s proposed plan. Moreover, the court considered that “Dr. Bailey is probably the most [e]minent person in the particular field to handle this correctly.” Given the uniformity of the experts’ opinion that transfer should occur quickly and the substantial evidence in the record that the Transitioning Families program was prepared to manage the change in custody immediately, the court did not abuse its discretion in selecting that program.

## **3. Dr. Packer’s Evaluation**

The trial court found that Dr. Packer’s testimony was “unrefuted,” her qualifications were “exemplary,” and her report was “very thorough.” The court rejected Jaime’s argument that Dr. Packer was biased. The court stated, “Dr. Packer testified that Ms. Gay is a good and nurturing parent. Contrary to Mr. Terpko’s inference that Ms. Gay embarked on an intentional course of alienation, she views that alienation in the context

of Ms. Gay's psychological make-up and world view. She now has very strong opinions about the ultimate outcome, but her conclusions are supported by the facts adduced. In particular, her description of the concept of 'splitting' and alienation were of benefit to the court."

Although not entirely clear, Jaime seems to argue that the court erred in relying on Dr. Packer's evaluation because it improperly conflates parental alienation with the "Parental Alienation Syndrome"<sup>4</sup> and "is based on deceit and pseudo-science." The record does not support Jaime's arguments. Dr. Packer at no point discussed Parental Alienation Syndrome or suggested that the children were suffering from any such disorder. Dr. Packer testified that alienation is an irrational negative reaction toward one parent that is fostered by the other parent. In her report Dr. Packer explained, "Estrangement between child and a parent is what happens when there is a reality basis for the child to have ambivalent or negative feelings toward a parent. In cases where there has been documented abuse, children sometimes reject the abusive parent. . . . When a child rejects a parent in a divorce/custody context, the dilemma is sorting out estrangement vs. alienation. Alienation is the phenomenon of a child rejecting a parent when the child previously had a good enough relationship with both parents and now the child views one parent as all good and the other parent as all bad." A parent's statements and actions that result in the alienation of a child from one parent, whether conscious or unconscious, are properly considered by the court in determining child custody. (See *In re Marriage of LaMusga* (2004) 32 Cal.4th 1072, 1085 ["[T]he mother is not purposely trying to alienate the children from their father, but . . . the mother's inability to 'let go' of her anger toward the father caused her to project those feelings onto their children and to reinforce the children when they expressed negative feelings toward their father."].)

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<sup>4</sup> Parental Alienation Syndrome is a disorder described as "a disturbance in which children are not merely systematically and consciously 'brainwashed' but are also subconsciously and unconsciously 'programmed' by one parent against the other." (Cheri L. Wood, *The Parental Alienation Syndrome: A Dangerous Aura of Reliability* (1994) 27 Loyola L.A. L.Rev. 1367, 1369-1372.)

Jaime also contends Dr. Packer failed to complete a full evaluation because she did not administer Michael's psychological testing and instead relied on a report from Michael's expert. Dr. Packer's report states, "Each parent participated in an informal Mental Status Examination, and completed the Minnesota Multiphasic Personality Inventory-2nd Edition (MMPI-2). Jaime took the MMPI-2 in the office of the undersigned. Michael had recently taken the MMPI-2 as part of the psychological evaluation he completed with Dr. Mark Patterson, and Dr. Patterson provided the undersigned with Michael's MMPI-2 answer sheet and narrative report." Contrary to mother's suggestion, Dr. Packer did not rely on Dr. Patterson's report "to evaluate custody" in lieu of conducting her own full evaluation. Dr. Packer's report indicates that, as part of her complete custody evaluation, she interviewed Michael on four occasions for a total of six hours. She relied on Dr. Patterson's report solely to evaluate Michael's psychological functioning. There was no error in this regard.

#### **4. Jaime's Therapy and Visitation**

The transitional plan directs that an "appropriate therapist for Ms. Gay shall be identified by Dr. Packer in collaboration with Dr. Bailey. Ms. Gay shall attend therapy as recommended by Dr. Packer and shall follow all recommendations of the therapist. [¶] . . . After the children are released to the transport team, Ms. Gay shall have no contact of any sort with the children (i.e. no contact in person or via email, phone, letter, through third parties or in any other manner) until Dr. Packer, in collaboration with Dr. Bailey and Ms. Gay's therapist, determines that Ms. Gay is ready for reintegration with the children. It is anticipated that the period of no contact will be at least 90 days." Jaime contends the transitional plan (1) improperly requires that she attend therapy, (2) improperly delegates selection of Jaime's therapist to Dr. Packer, and (3) improperly delegates discretion to determine her visitation to Dr. Packer and the therapeutic team. We find no error.

Jaime does not dispute that the court had authority under section 3190, subdivision (a) to require that she participate in therapy.<sup>5</sup> She does argue that the therapy requirement in the written order conflicts with the court's oral pronouncement. At the hearing on the transition plan, the court observed that Jaime seemed "blind" to the pressure that was being put on the children and told her, "there is all of this suggestion that you need to engage in some form of therapy. Well, probably, if that's going to result in a relationship. I am not going to impose that as a precondition to your having a relationship with your children. [¶] Do I think that it should occur? Yes. I think you're going to have to work your way through this terrible situation." Immediately thereafter, the court stated that it wanted Jaime to have access to information about the children and communication with their therapists while they were in the transition program. At the close of the hearing, the court directed that the proposed order that had been submitted be edited to include reference to mother's access to information about the children. The revised order was submitted and signed that afternoon. Michael argues, "By signing the final order the same day of the oral comments, Judge Wilson made clear that counseling was to be a part of reunification although not a condition of receiving information." While the court's comment at the hearing may have suggested otherwise, the comment was not an order. The proposed transition plan, which included the therapy requirement, was submitted to the court in advance of the hearing, was discussed at the hearing and ultimately adopted as proposed. The changes incorporated into the order after the hearing

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<sup>5</sup> Section 3190, subdivision (a) reads: "The court may require parents or any other party involved in a custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, for not more than one year, provided that the program selected has counseling available for the designated period of time, if the court finds both of the following: [¶] (1) The dispute between the parents, between the parent or parents and the child, between the parent or parents and another party seeking custody or visitation rights with the child, or between a party seeking custody or visitation rights and the child, poses a substantial danger to the best interest of the child. [¶] (2) The counseling is in the best interest of the child."



all relate to mother's access to information about the children. The court's earlier comment does not negate the express terms of the transition plan or indicate that ultimately the court did not intend to require Jaime to participate in therapy as part of the plan.

The court did not abuse its discretion in ordering that Drs. Packer and Bailey identify an appropriate therapist for Jaime. Jaime did not object to this provision of the transition plan at the hearing, so that the record does not include an explanation of the court's reasoning. Arguably the issue has been waived. Nonetheless, a reasonable explanation appears in the record. Dr. Packer's report indicates that the results of Jaime's MMPI-2 tests are "consistent with individuals who tend to be immature, self-centered, narcissistic, manipulative, and lacking insight. Persons with Jaime's personality profile can show a pattern of not recognizing their own contribution to their life circumstances, and viewing the actions of others as the cause of their problems." Dr. Packer explained that mother's personality had led her to disparage and blame many of the professionals involved in the proceedings when they expressed opinions about custody that were contrary to what she wanted. Jaime insisted that the children continue counseling with Virginia Coleman, also her (Jaime's) therapist, who supported her custody request but was asked to resign as the children's therapist amid allegations that she could not be impartial. Given Jaime's difficulty working with professionals who did not tell her what she wanted to hear, the court could have concluded, quite reasonably, that Jaime should receive assistance from a therapist who could be objective and could guide her through the custody transition, which she vehemently opposed.

Finally, the court did not improperly delegate to the therapeutic team authority regarding Jaime's visitation. The order expressly finds that visitation should not be permitted until mother is deemed ready for reintegration in the children's lives. The order tasks the therapeutic team with that determination and expressly anticipates that it would take at least 90 days before reintegration could commence. The order does not constitute an improper delegation of judicial power. (See *In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1477 [requiring court order to "set[] criteria (such as satisfactory progress) to

inform the therapists when visitation is appropriate”]; *In re Chantal S.* (1996) 13 Cal.4th 196, 213 [upholding order authorizing father’s visitation to “begin when father’s chosen therapist determined father had made ‘satisfactory progress for a time’ ”].)

## **5. Jaime’s Access to Information about the Children**

As discussed above, the court repeatedly emphasized that mother was to have timely access to information about her children. Jaime contends the court’s written order fails to include numerous specific requirements regarding communication, but all that the court specified are incorporated in the order. The order provides generally that “Ms. Gay shall be kept fully informed of the children’s medical treatment and needs, psychological treatment and needs and educational progress. Mr. Terpko shall cooperate to make this information sharing happen and shall sign any and all releases necessary to allow Ms. Gay full access to such records.” The order also states that mother and her husband “may be involved in the delivery or transport of the children to the degree Dr. Bailey directs” and the order requires that the transition team update mother “on a regular basis . . . at least every three days.” The requirement that mother be notified in the event of “an emergency or a medical situation” is encompassed in the provision that mother be “kept fully informed of the children’s medical treatment and needs.”

## **6. Jaime’s Due Process Rights**

Jaime contends her right to due process was violated when the court “allowed her attorney to withdraw” before the conclusion of the case and denied her request for a continuance to seek new counsel. The record does not support her claim.

Jaime signed a substitution of counsel on March 30, more than three weeks before the hearing on the transition plan. The court was not asked to rule on whether the attorney could withdraw. Jaime did not at any time request a continuance to retain new counsel. At the hearing on April 22, Jaime requested a continuance to allow her more time to review documents regarding the proposed transition plan that she had received on April 18. Given the concerns expressed by the court that the transition should happen as soon as possible to avoid further traumatizing the children, the court acted well within its

discretion in denying Jaime's request for a continuance and promptly conducting the hearing and entering its order.

**Disposition**

The order is affirmed.

POLLAK, P. J.

WE CONCUR:

TUCHER, J.

BROWN, J.